



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

CRS  
Docket No: 4959-99  
30 May 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by Headquarters, Marine Corps dated 3 December 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070  
JAM4  
03 DEC 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF [REDACTED]  
[REDACTED] U.S. MARINE CORPS

Ref: (a) Article 15, UCMJ

1. We are asked to provide an opinion on Petitioner's request for removal of the record of nonjudicial punishment (NJP) imposed on 2 February 1999.

2. We recommend that the requested relief be denied. Our analysis follows.

3. Background

a. On 2 February 1999, Petitioner received nonjudicial punishment (NJP) under reference (a) for violating Article 111, UCMJ, by driving while intoxicated. Specifically, Petitioner was stopped during an identification card check while driving aboard Marine Corps Air Station (MCAS), Miramar, California. The military policeman detected an odor of alcohol coming from Petitioner and administered a field sobriety test, which Petitioner failed. A subsequent breath analysis test revealed that Petitioner's blood alcohol content was 0.12 percent. Petitioner accepted NJP and was awarded a punitive letter of censure and forfeitures of \$1000.00 pay per month for a period of 2 months, of which \$1000.00 pay per month for one month was suspended for 6 months. Petitioner did not appeal. On 10 March 1999, Petitioner appeared in Military Traffic Court for a determination of whether his base driving privilege should be revoked based on the charge. The presiding magistrate dismissed the charge.

4. Analysis #

a. Petitioner maintains that the record of NJP should be removed because the magistrate dismissed the DUI offense that Petitioner pleaded guilty to at NJP. This argument is without merit. The record of the NJP demonstrates that Petitioner admitted to drinking alcohol and driving prior to being stopped

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
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[REDACTED] U.S. MARINE CORPS

at the main gate to MCAS, Miramar. According to the breath analysis test results, the Petitioner's blood alcohol content was 0.12 percent. Finally, the Petitioner admitted his guilt to the charge at NJP. The NJP authority did not abuse his discretion in finding Petitioner guilty and imposing punishment based on the evidence presented. The NJP authority considered the available evidence, including Petitioner's admission, and was convinced by a preponderance of the evidence that each element of the offense was satisfied. The contrary finding by a different authority, on presumably different evidence, is irrelevant.

5. Conclusion. Accordingly, for the reasons set forth above, we recommend denial of the requested relief.

*M. W. Fisher, Jr.*

M. W. FISHER, JR.  
Head, Military Law Branch  
Judge Advocate Division